

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

OWEN W. BARNABY,
Plaintiff

)
)

Vs.

) Hon. Robert J. Jonker
) Hon. Mag. Sally J. Berens

MICHIGAN STATE GOVERNMENT, ET, AL
Defendants

) Case No. 1:22 -CV- 1146

Owen W. Barnaby
P.O. Box 1926
Kennesaw, GA 30156
(678) 382- 4183
Bossproperties96@gmail.com

Addresses of Defendants
Berrien County Government
701 Main Street,
St. Joseph, Michigan 49085
(269) 983-7111

Attorney, T. Seth Koches, for,
Niles-Charter-Township/Board of Trustee
470 W. Centre Ave., Ste. A, Portage, MI. 49024
269-382-4500 Koches@michigantownshiplaw.com

Jeffery R. Holmstrom (P29405)
Holmstrom Law Office PLC
830 Pleasant Street, Suite 100
St. Joseph, Michigan 49085

City of Benton Harbor
200 East Wall Street
Benton Harbor, MI 49022
(269) 927-8457

State Bar of Michigan
306 Townsend Street
Lansing, Michigan 48933
(517) 346-6305

Hon. Dana Nessel & Hon. Bryan W. Beach
Assistant & Attorney General of Michigan
525 W. Ottawa, 5th Floor
P.O. Box 30736, Lansing, MI 48909
BeachB@michigan.gov
517.335.7659 (phone) 517.335.7640 (fax)

MOTION FOR DEFAULT JUDGMENT
FOR FAILURE TO FILE AN ANSWER TO
COMPLAINT OR A MOTION UNDER RULE 12

Come now, Plaintiff, In Pro Se, with his, ‘Motion for Default Judgment for Defendants’ Failure to File an Answer to Plaintiff’s Complaint or a Motion Under Rule 12.

Plaintiff, In Pro Se, Owen W. Barnaby, is requesting a Default Judgment against all listed Defendants : 1), Defendant - Lori D. Jarvis Registrar; 2), Defendant - Lora L. Freehling Registrar; 3), Defendant - Kathleen Culberson, Notary Public; 4), Defendant – Bret Witskowski, Treasurer; 5), Defendant – Shelly Weich, Treasurer; 6), Defendant – Board of Commissioner; 7), Defendant – Attorney Mckinley R. Elliott; 8), Defendant – Attorney Donna B. Howard; 9), Defendant – Attorney James MCGovern; 10), Defendant – Berrien County Government; 11), Defendant – Bret Witskowski, in his Individual capacity; 12), Defendant – State Bar of Michigan, 13), Defendant – Attorney Jefferey R. Holmstrom and 14), Defendant – Holmdtrom Law Office; 15), Defendant - Niles Charter Township Board of Trustees; and, 16), Defendant - for Defendant - Niles Charter Township, for the same Defendants’ failure to file an answer to Plaintiff’s Complaint or a Motion Under Rule 12.

The request is based on the Brief in Support filed with the request and the facts, legal authorities and arguments contained in the Brief in Support of this Default Judgment.

Respectfully Submitted,

Dated: January 3, 2023,

\S/ Owen W. Barnaby
Owen W. Barnaby, In Pro Se.

CERTIFICATE OF SERVICE

The undersigned states that on the 3rd day of January 2023, a duplicate original of Plaintiff's, "Motion for Default judgment", filed with the Clerk of the using the ECF System, which will provide electric notice to the parties of record, and I have mailed by U.S. Postal Service the same to the non-ECP participants.

Respectfully Submitted,

Dated: January 3, 2023,

\S/ Owen W. Barnaby
Owen W. Barnaby, In Pro Se.

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

OWEN W. BARNABY,
Plaintiff

)
)

Vs.

) Hon. Robert J. Jonker
) Hon. Mag. Sally J. Berens

MICHIGAN STATE GOVERNMENT, ET, AL
Defendants

) Case No. 1:22 -CV- 1146

Owen W. Barnaby
P.O. Box 1926
Kennesaw, GA 30156
(678) 382- 4183
Bossproperties96@gmail.com

Addresses of Defendants
Berrien County Government
701 Main Street,
St. Joseph, Michigan 49085
(269) 983-7111

Attorney, T. Seth Koches, for,
Niles-Charter-Township/Board of Trustee
470 W. Centre Ave., Ste. A, Portage, MI. 49024
269-382-4500 Koches@michigantownshiplaw.com

Jeffery R. Holmstrom (P29405)
Holmstrom Law Office PLC
830 Pleasant Street, Suite 100
St. Joseph, Michigan 49085

City of Benton Harbor
200 East Wall Street
Benton Harbor, MI 49022
(269) 927-8457

State Bar of Michigan
306 Townsend Street
Lansing, Michigan 48933
(517) 346-6305

Hon. Dana Nessel & Hon. Bryan W. Beach
Assistant & Attorney General of Michigan
525 W. Ottawa, 5th Floor
P.O. Box 30736, Lansing, MI 48909

BeachB@michigan.gov

517.335.7659 (phone) 517.335.7640 (fax)

SUPPORTING BRIEF OF MOTION FOR DEFAULT JUDGMENT

**FOR FAILURE TO FILE AN ANSWER TO
COMPLAINT OR A MOTION UNDER RULE 12**

STATEMENT OF FACTS

First, all Defendants listed in Plaintiff's Motion for Default Judgment were properly served but failed to file an answer to Plaintiff's Complaint or a motion under Rule 12. The Defendants Niles Charter Township and the Niles Charter Township Board of Trustees (together the "Township Defendants") were properly served, Second Amended Complaint on December 8, 2022. But failed to file an answer to Plaintiff's Complaint or a motion under Rule 12, on or before December 28, 2022.

Second, before Plaintiff by US Postal certified mail, with restricted Delivery and with return receipt Serve Summons and Complaint upon the Clients of Attorney Thaddeus Hackworth. Plaintiff spoke with Attorney Thaddeus Hackworth and he authorized Plaintiff to mail Summons and Complaint, to him on his clients behalf: 1), Defendant - Lori D. Jarvis Registrar; 2), Defendant - Lora L. Freehling Registrar; 3), Defendant - Kathleen Culberson, Notary Public; 4), Defendant – Bret Witskowski, Treasurer; 5), Defendant – Shelly Weich, Treasurer; 6), Defendant – Board of Commissioner; 7), Defendant – Attorney Mckinley R. Elliott; 8), Defendant – Attorney Donna B. Howard; 9), Defendant – Attorney James MCGovern; 10), Defendant – Berrien County Government; 11), Defendant – Bret Witskowski, in his Individual capacity, on December 09, 2022. But failed to file an answer to Plaintiff's Complaint or a motion under Rule 12, on or before December 29, 2022.

Again, Plaintiff has spoken with Defendants' Attorney, Mr. Thaddeus Hackworth, and he instructed Plaintiff to served him on behalf of his same Clients above. The signed return receipt, PS Form 381,(copied Green Card) is attached proof of service on all named Defendants.

Third, Defendant – State Bar of Michigan was properly served with Summon and Complaint on or about December 09, 2022. But failed to file an answer to Plaintiff's Complaint or a motion under Rule 12, on or before December 29, 2022.

Furth. these Defendants were properly served Summons and Complaint, but rejected them: 1), Defendant – Attorney Jefferey R. Holmstrom and 2), Defendant – Holmdtrom Law Office, on December 09, 2022. But willful rejected the Summons and Complaint and failure to file an answer to Plaintiff's Complaint or a motion under Rule 12, on or before December 29, 2022. In addition, Plaintiff called spoke once with, Defendant – Attorney Jefferey R. Holmstrom and several times with his legal secretary about this same Complaint.

"Plaintiff called and spoke with Defendant Attorney Holmstrom as a Defendant in the case and about some of his prior clients; also, about Plaintiff's intent to add to the Complaint. It was a "Surprise" to Plaintiff, when Defendant Attorney Holmstrom stated that, Plaintiff has no further need to contact him about the same two matters as the Magistrate Judge has filed a Report and Recommendation which Judge Robert J. Jonker who will basically just rubber stamp even if Plaintiff responded."

See mailing tracking information below: [Tracking Number:](#)

70221670000121730528

[Copy Schedule a Redelivery](#)

Latest Update

We attempted to deliver your item at 1:49 pm on December 9, 2022 in SAINT JOSEPH, MI 49085 and a notice was left because an authorized recipient was not available. You may arrange redelivery by using the Schedule a Redelivery feature on this page or may pick up the item at the Post Office indicated on the notice beginning December 10, 2022. If this item is unclaimed by December 24, 2022 then it will be returned to sender.

Get More Out of USPS Tracking:
[USPS Tracking Plus®](#)

Delivery Attempt: Action Needed

Notice Left (No Authorized Recipient Available)

SAINT JOSEPH, MI 49085
December 9, 2022, 1:49 pm

Out for Delivery
SAINT JOSEPH, MI 49085
December 9, 2022, 6:10 am
[See All Tracking History](#)
December 8, 2022

Arrived at USPS Regional Destination Facility
GRAND RAPIDS MI DISTRIBUTION CENTER ANNEX December 7, 2022, 11:17 am

Tracking Number:

70221670000121730528

[Copy Add to Informed Delivery](#)

Latest Update

Your item could not be delivered on December 28, 2022 at 11:12 am in BENTON HARBOR, MI 49022. It was held for the required number of days and is being returned to the sender.

Get More Out of USPS Tracking:
[USPS Tracking Plus®](#)

Alert

Unclaimed/Being Returned to Sender
BENTON HARBOR, MI 49022
December 28, 2022, 11:12 am

Lastly, all Defendants were properly served in the same manner, by US Postal certified mail, with restricted Delivery and with return receipt, inclusive of: Defendant – Kendell S. Asbenson, Assistant Attorney General of state of Michigan and Defendant – Dana Nessel Attorney General of State of Michigan, Defendants, the Hon. Jennifer Granholm former Governor, the Hon. Rick Snyder former Governor, and the Hon. Gretchen the current Governor of the State of Michigan and Michigan Supreme Court whom all file motion under Rule 12. However, all the Defendants listed in Plaintiff's Motion for Default Judgment failed to file an answer to Plaintiff's Complaint or a motion under Rule 12.

ARGUMENT

The United States District Court for the Eastern District of Michigan, that issued the Summons clearly states, that:

A lawsuit has been filed against you.

“Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff’s attorney...”

“If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.”

Furthermore, this United States District Court for the Western District of Michigan, that issues Summons in Civil Actions states, that:

AO 440 (Rev. 01/09) Summons in a Civil Action - MIWD (Rev. 07/15)

“YOU ARE HEREBY SUMMONED and required to serve upon plaintiff, an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure within ___, days after service of this sum mons on you (not counting the day you received it). If you fail to respond, **judgment by default will be entered against you** for the relief demanded in the complaint. You must also file your answer or motion with the Court.”

Moreover, Fed. R. Civ. P. 12 (b)(1)(A) and Fed. R. Civ. P. 55 states in respect to Judgment as follows:

Rule 55 – Default; Default Judgment

(a) **Entering a Default.** When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party’s default.

(b) Entering a Default Judgment.

(1) *By the Clerk.* If the plaintiff's claim is for a sum certain or a sum that can be made certain by computation, the clerk—on the plaintiff's request, with an affidavit showing the amount due—must enter judgment for that amount and costs against a defendant who has been defaulted for not appearing and who is neither a minor nor an incompetent person.

(2) *By the Court.* In all other cases, the party must apply to the court for a default judgment. A default judgment may be entered against a minor or incompetent person only if represented by a general guardian, conservator, or other like fiduciary who has appeared. If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 7 days before the hearing. The court may conduct hearings or make referrals—preserving any federal statutory right to a jury trial—when, to enter or effectuate judgment, it needs to:

- (A) conduct an accounting;
- (B) determine the amount of damages;
- (C) establish the truth of any allegation by evidence; or
- (D) investigate any other matter.

Rule 55 – Default; Default Judgment

12.1 In these Rules, 'default judgment' means judgment without trial where a defendant—

- (a) has failed to file an acknowledgment of service; or
- (b) has failed to file a defense or any document intended to be a defense.

Plaintiff contends, that, in truth and in fact, each time, Plaintiff sought Courts for redressed, Defendants retaliated and intentionally misled Plaintiff, with intentionally false misrepresentation and omission of the material facts, they were obligated to disclose and with reckless disregards for the truth and concealment, and deterred Plaintiff from timely discovery in order to Amend-then-Complaint, that, they stole and defrauded Plaintiff of his real properties and is causing him, 'Intentional infliction of emotional distress', with 'Forged Quit Claim Deed', 'Forged, Notice of Judgment of Foreclosure', and 'Forged Certificates of Forfeiture, Unauthorized Practice Law, on intentional false pretense of unpaid properties taxes and deterred this Complaint issues of claim from redress and prevented Plaintiff from getting monetary relief he warrants.

Moreover, all Defendants were properly served in the same manner, by US Postal certified mail, with restricted Delivery and with return receipt, inclusive of: Defendant – Kendell S. Asbenson, Assistant Attorney General of state of Michigan and Defendant – Dana Nessel Attorney General of State of Michigan, Defendants, the Hon. Jennifer Granholm former Governor, the Hon. Rick Snyder former Governor, and the Hon. Gretchen the current Governor of the State of Michigan and Michigan Supreme Court whom all filing motion under Rule 12. In the same manner: 1), Defendant - Lori D. Jarvis Registrar; 2), Defendant - Lora L. Freehling Registrar; 3), Defendant - Kathleen Culberson, Notary Public; 4), Defendant – Bret Witskowski, Treasurer; 5), Defendant – Shelly Weich, Treasurer; 6), Defendant – Board of Commissioner; 7), Defendant – Attorney Mckinley R. Elliott; 8), Defendant – Attorney Donna B. Howard; 9), Defendant – Attorney James MCGovern; 10), Defendant – Berrien County Government; 11), Defendant – Bret Witskowski, in his Individual capacity; 12), Defendant – State Bar of Michigan, 13), Defendant – Attorney Jefferey R. Holmstrom and 14), Defendant – Holmdtrom

Law Office; 15), Defendant - Niles Charter Township Board of Trustees; and, 16), Defendant - Niles Charter Township, should have responded Filed an Answer to Plaintiff's Complaint or a Motion Under Rule 12, within the 21 days. As such Plaintiff's Motion for Default Judgment against all listed Defendants for their failed to file an answer to Plaintiff's Complaint or a motion under Rule 12, should by granted.

Relief Requesting

For the reasons articulated in Supporting Brief to Motion for Default Judgment for Defendants' Failure to File an Answer to Plaintiff's Complaint or a Motion Under Rule 1r, Plaintiff is asking this Your Honorable Clerk of Court or the Court to grant Plaintiff's, 'Motion for Default judgment against the Defendants mentioned with full damages set forth in his affidavit.

Respectfully Submitted,

Dated: January 3, 2023,

\S/ Owen W. Barnaby
Owen W. Barnaby, In Pro Se.

CERTIFICATE OF SERVICE

The undersigned states that on the 3rd day of January 2023, a duplicate original of Plaintiff's, "Motion's Brief for Default judgment", was filed with the Clerk of the Court, using the ECF System, which will provide electric notice to the parties of record, and I have mailed by U.S. Postal Service the same to non-ECP participants.

Respectfully Submitted,

Dated: January 3, 2023,

\S/ Owen W. Barnaby
Owen W. Barnaby, In Pro Se.